

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TIMOTHY BLAU,

Plaintiff,

-against-

ORDER

13 CV 2202 (DRH) (WDW)

P.O. JUSTIN MAYNES, BADGE #5632,
and P.O. MURTHA, BADGE #5640,

Defendants.

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HURLEY, Senior District Judge:

On October 3, 2011, plaintiff Timothy Blau (“Plaintiff”) commenced an action (Index No. 11-cv-4818) against Suffolk County, Suffolk County Police Department, P.O. Justin Maynes, Badge #5632 (“Maynes”), P.O. Murtha, Badge #5640 (“Murtha”), and P.O.s John and Jane Doe #1-10, individually and in their official capacities, seeking compensatory damages, punitive damages and attorney’s fees pursuant to 42 U.S.C. §§ 1981, 1983, and 1988, the Fourth, Fifth and Fourteenth Amendments of the United States Constitution, Article 1, Sections 6, 11, and 12 of the New York State Constitution, and the common law of the State of New York for violations of his civil rights (the “Initial Action”). Subsequently, on March 6, 2013, Blau filed a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure (“Rule”) 41(a)(1), dismissing the action only as against Maynes and Murtha because of service-related issues.

Rather than attempt to re-serve Maynes and Murtha in the Initial Action, Plaintiff commenced a new action against them (Index No. 13-cv-2202) on April 11, 2013 (the “Second Action”). Although an answer was served by Maynes and Murtha in the Second Action on July 26, 2013, it was not docketed. Plaintiff moved for a default against Maynes and Murtha pursuant to Rule 55(a) on December 5, 2013. After Maynes and Murtha’s purported default was noted by the Clerk of the Court on March 19, 2014, Plaintiff moved for entry of a default judgment under

Rule 55(b) on March 27, 2014. On March 31, 2014, Plaintiff's motion for entry of a default judgment against Maynes and Murtha in the Second Action was referred by United States Senior District Judge Spatt to United States Magistrate Judge William D. Wall to issue a Report and Recommendation as to whether Plaintiff had demonstrated that the allegations in the Complaint established Maynes and Murtha's liability such that the motion for default judgment should be granted, and if so, to determine the appropriate amount of damages, costs, and/or fees, if any, to be awarded. However, on April 1, 2014, subsequent to the referral of the motion for entry of default judgment, Maynes and Murtha's answer in the Second Action was docketed. Judge Wall then issued an Order to Show Cause why the Initial Action and Second Action should not be consolidated for all purposes under the Initial Action. Neither Plaintiff, Maynes nor Murtha raised an objection to the consolidation, and Maynes and Murtha requested that the motion for entry of default judgment be denied because they had served an answer in the Second Action.

Based upon the foregoing, Judge Wall issued a Report and Recommendation on April 7, 2014, which recommended that Plaintiff's motion for a default judgment be denied, and that the Initial Action be consolidated with the Second Action under Index No. 11-cv-4818. Two days after Judge Wall issued his April 7, 2014 Report and Recommendation, the Second Action was reassigned to District Judge Denis R. Hurley for all further proceedings.

More than fourteen days have elapsed since service of the Report and Recommendation and no party has filed an objection. Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the April 7, 2014 Report and Recommendation for clear error, and finding none, adopts the April 7, 2014 Report and Recommendation as the opinion of the Court. Plaintiff's motion for a default judgment is denied. The Court hereby directs that the Initial Action, *Timothy Blau v. Suffolk County, et al.*, Index No. 11-cv-4818, and the Second

Action, *Timothy Blau v. P.O. Justin Maynes, Badge #5632, and P.O. Murtha, Badge #5640*, Index No. 13-cv-2202, be consolidated under Index No. 11-cv-4818 for all purposes. The Clerk of the Court is directed to close the case *Timothy Blau v. P.O. Justin Maynes, Badge #5632, and P.O. Murtha, Badge #5640*, Index No. 13-cv-2202, and any further docket entries are to be made under Index No. 11-cv-4818.

SO ORDERED.

Dated: Central Islip, New York
April 29, 2014

_____/s/
Denis R. Hurley
United States District Judge